

September 15, 2006

Elizabeth Miller Jennings, Sr. Staff Counsel  
State Water Resources Control Board  
Office of Chief Counsel  
P.O. Box 100  
Sacramento, CA 95812-0100  
E-mail: [bjennings@waterboards.ca.gov](mailto:bjennings@waterboards.ca.gov)  
Fax: (916) 341-5199

**RE: Petition for Review of Waste Discharge Requirements (NPDES No. CA0109223) for the Poseidon Resources Corporation, Carlsbad Desalination Project, Issued by Regional Board Order No. R9-2006-0065.**

Dear Ms. Jennings and State Water Resources Control Board:

The Surfrider Foundation, San Diego Chapter (hereinafter “Surfrider”) and Orange County Coastkeeper (“Coastkeeper”) (collectively “Surfrider”) hereby petition the State Water Resources Control Board (“State Board”) for review of the National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0109223 (“the Permit”) adopted on August 16, 2006 by the California Regional Water Quality Control Board, San Diego Region (“Regional Board”), by Order No R9-2006-0065, for discharges of pollutants to waters of the United States from the Poseidon Resource Corporation (“Poseidon”)’s Carlsbad Desalination Project (CDP) discharge channel located at the Encina Power Station (“EPS”) in Carlsbad, California. A copy of Order No. R9-2006-0065 is attached hereto as Exhibit A.

As issued by the Regional Board, the Permit conflicts with the policies of the State Board and the Clean Water Act (“CWA”) in a number of respects. First, the Reopener Provision in the Permit is inadequate and threatens to undermine the State Board’s Proposed State Wide Policy on CWA 316(b) Regulations (“316(b) Policy”) before it is issued, via piecemeal permits issued by the Regional Board that are inconsistent with the State Board’s 316(b) Policy and federal law.

Second, the Permit fails to adequately consider or address the impacts of the operations of the Poseidon CDP when the EPS is not operational, or in the event the EPS is shut down and demolished.

**San Francisco**

1004 A O'Reilly Ave, San Francisco CA 94129  
t 415-440-6520 f 415-440-4155

**Santa Monica**

2515 Wilshire Blvd, Santa Monica CA 90403  
t 310-829-1229 f 310-829-6820

Third, the Permit conflicts with the CWA by ignoring the fundamental CWA requirement that all effluent be characterized in a Reasonable Potential Analysis (“RPA”) undertaken by the Regional Board *prior* to determining the need for water quality based effluent limits (WQBELs) in the permit. Permits must include WQBELs for pollutants that are or may be discharged at levels that cause, have reasonable potential to cause, or contribute to a receiving water excursion above any state water quality standard. As set forth more fully below, the Regional Board has established WQBELs in the Permit without following proper procedures and performing the analyses required in the State Water Resources Control Board (State Board)’s California Ocean Plan “Ocean Plan”. By failing to follow these procedures, it cannot be known whether the WQBELs in the permit are sufficiently inclusive and sufficiently stringent to ensure attainment of CWA water quality standards (“WQS”). WQS are meant to protect the water quality needed for our State’s waters to be usable for fishing, swimming, drinking and irrigation water supply, wildlife habitat, and the various other beneficial uses of such waters.

Permit limits that ensure attainment of WQS and protection of healthy aquatic ecosystems are key to the CWA’s scheme of ensuring that the beneficial uses of the public’s waters are protected, and to promote the overarching goal of the CWA, whose purpose is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). Respecting these goals and the letter of CWA law requires the State Board to reverse the Regional Board’s Permit decision with instructions to promulgate a Reopener Provision in the permit that complies with the mandates of the State Board’s policies and promulgates WQBELs protective of WQS based upon a RPA that complies with the California Ocean Plan.

Surfrider, along with San Diego Coastkeeper, raised and presented the issues addressed in this Petition, as well as other issues, to the Regional Board in an August 9, 2006 public comment letter duly submitted jointly by Surfrider and San Diego Coastkeeper to the Regional Board during the applicable public comment period on the Permit and in a public hearing before the Regional Board on the Permit. The comment letter is attached to the Petition as Exhibit B. Surfrider has sent copies of this Petition to the Regional Board and to the discharger.

## **I. *Factual Background***

### **A. *Surfrider***

Surfrider is a non-profit public benefit corporation organized under the laws of the State of California dedicated to the protection and enjoyment of the world's oceans, waves and beaches for all people, through conservation, activism, research and

education. Surfrider and its San Diego Chapter are dedicated to this mission and to the protection of coastal water quality, watersheds, and the preservation of waves and beaches throughout San Diego County, including those in and around the City of Carlsbad. Surfrider and its members benefit directly from the protection of these natural resources by using them for diverse recreational and aesthetic enjoyment purposes. Moreover, the waters in question are an important resource for recreational and commercial fisheries. The waters also provide significant wildlife values important to the mission and purpose of Petitioner. The value of these waters includes, among other things, critical nesting and feeding grounds for resident and migratory water birds, essential habitat for endangered species and other plants and animals, nursery areas for fish and shellfish and their aquatic food organisms, and open space areas.

Surfrider's office contact information for this Petition is: Surfrider Foundation, 8117 West Manchester Ave., # 297, Playa del Rey, California 90293. Their Telephone number is (310) 410-2890, and E-mail address is: [jgeever@surfrider.org](mailto:jgeever@surfrider.org) to the attention of Joe Geever. Surfrider's legal counsel's contact information in this matter is as follows: Daniel Cooper, Lawyers for Clean Water, Inc., 1004 O'Reilly Avenue, San Francisco, California 94129, Telephone: (415) 440-6520, Fax: (415) 440-4155, Email: [cleanwater@sfo.com](mailto:cleanwater@sfo.com).

**B. *Coastkeeper***

Orange County Coastkeeper is also a non-profit public benefit corporation organized under the laws of the State of California dedicated to the protection of water quality, watersheds, and the coastal environment. Coastkeeper's members use and enjoy coastal waters throughout Orange County and Southern California, including the coastal waters surrounding the City of Carlsbad.

Coastkeeper's office contact information is 3151 Airway Avenue, Suite F-110, Costa Mesa, CA 92626, and can be reached by telephone at (714) 850-1965 and by e-mail at [coastkeeper1@earthlink.net](mailto:coastkeeper1@earthlink.net). (Attn: Garry Brown). Coastkeeper's legal counsel's contact information in this matter is as follows: Daniel Cooper, Lawyers for Clean Water, Inc., 1004 O'Reilly Avenue, San Francisco, California 94129, Telephone: (415) 440-6520, Fax: (415) 440-4155, Email: [cleanwater@sfo.com](mailto:cleanwater@sfo.com).

Using targeted administrative and legal advocacy before the State Board and regional regulators, both Surfrider and Coastkeeper play a lead role in developing sound legal standards, permits, and regulations. A key area of the groups' focus is ensuring that State and Federal environmental laws are implemented properly and enforced. Where necessary, Surfrider and Coastkeeper initiate enforcement actions on behalf of themselves and their members.

Surfrider and Coastkeeper, their members, and the general public are adversely impacted by the discharge of pollutants from the Poseidon CDP into coastal waters,

which threaten serious adverse impact on the near shore waters and aquatic ecosystems in and around the City of Carlsbad. Surfrider and Coastkeeper, their members, and the general public are also aggrieved by the Regional Board's Permit decision because the Permit authorizes the discharge of pollutants from the Poseidon CDP into coastal waters and renders these discharges of pollutants lawful under the CWA, thus beyond the public's ability to seek remedy for these discharges under the enforcement provisions of the CWA (which include action by the United States Environmental Protection Agency ("EPA"), the Federal agency primarily responsible for protection the nation's waters, and/or by citizens).

### **C. *Poseidon's CDP***

Poseidon proposes to construct and operate the Carlsbad Desalination Project (CDP) on a 4-acre parcel on the site of the Encina Power Station ("EPS"). Poseidon has entered into a renewable 60-year lease with Cabrillo Power I LLC (the owner and operator of the Encina Power Station) for the desalination project site. The Encina Power Station (EPS) generates up to 939 megawatts of electrical power using five steam generators and one gas turbine generator. The EPS steam generators are cooled by a once through seawater flow system. EPS cooling water is discharged to the Pacific Ocean under the requirements established in Regional Water Board Order No. 2000-03.

Under the proposed CDP, a portion of the EPS cooling water effluent would be diverted to CDP for seawater desalination treatment. Poseidon proposes to use 100 MGD of EPS cooling water effluent as source water. An average daily flow of 50 MGD of fresh potable water would be produced by the CDP. Treatment processes at the CDP will consist of pretreatment, reverse osmosis desalination, and disinfection and product water stabilization. The Facility expects to have 13 reverse osmosis ("RO") units operating in parallel at the facility. One RO unit at a time is expected to be offline for membrane cleaning or maintenance. The expected average daily flow of 50 MGD of RO brine is based on the assumption that one RO unit will be down at all times for cleaning or maintenance.

The 50 MGD of fresh potable water produced by Poseidon would be piped to the City of Carlsbad potable water system for distribution to Carlsbad water customers and conveyance to adjacent North San Diego County water agencies. The production of 50 MGD of fresh potable water would result in the generation of approximately 55 MGD of combined filter backwash water and concentrated saline wastewater that would be discharged back into the EPS cooling water discharge channel for discharge to the Pacific Ocean. The discharge would contain virtually all dissolved solids and some of the suspended solids contained in the CDP intake water. Thus, the wastewater flow volumes within the EPS discharge channel would be reduced by 50 MGD, however contain a greater concentration of dissolved solids (mostly salts).

**II. *Poseidon's CDP Permit Should be Overturned and Remanded to the Regional Board Because the Reopener Provision is Inadequate, WQBELs Are Not Based Upon a Proper RPA, and Because the CDP Has Not Been Properly Analyzed for Operation as a Stand Alone Facility***

**A. *The Re-Opener Provision in the Permit is Inadequate and Undermines the State Board's Proposed State Wide Once Through Cooling Policy.***

On its face, the Reopener Provision in the Permit is inadequate because it contains no requirement that the Permit be re-opened in the face of either: demonstrable harm to marine ecosystems; violations of the Permit; changes in State or federal law or policies; or for the occurrence of any of the enumerated Reopener terms and conditions stated in the Permit. Instead, the Reopener Provision provides that the "Order *may be* modified, revoked and reissued, or terminated for cause including, but not limited to" ten specified causal factors or occurrences (emphasis supplied). *See* Permit, Section VI.C.1.<sup>1</sup> These occurrences include, among others, "[a] change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge," and further include "an effluent limitation if monitoring establishes that the discharge causes, has the reasonable potential to cause, or contribute to an excursion above an Ocean Plan Table B water quality objective."

Thus, there is no express provision *requiring* the reopening and modification, reissuance or any other action on the Permit under any of the enumerated circumstances; nor is there a requirement that the Permit be reopened once the State Board's 316(b) Policy becomes final and Poseidon's compliance with both this Policy and the federal regulations is required by law. Even assuming that the adoption of the forthcoming 316(b) Policy fits one of the enumerated circumstances set forth in the Permit's Reopener Provision, there is absolutely no requirement that the Regional Board reopen the Permit once the 316(b) Policy takes effect. This is so in spite of the fact that the State Board's 316(b) Policy has been developing for many months in concert with numerous public hearings to receive input from stakeholders and the public on its implementation, which is likely to be imminent.<sup>2</sup>

Besides the CDP, Poseidon is proposing several once through cooling desalination plants along the California coast. These plants will operate in tandem with power generating stations, which also require permits from the regional boards. For

---

<sup>1</sup> It is also worth noting that the State and regional boards rarely re-open permits, with just 27 reopenings in the last 19 years. The rate of reopening is therefore approximately 1.5 per year.

<sup>2</sup> The draft 316(b) Policy, entitled *Scoping Document: Proposed Statewide Policy on Clean Water Act Section 316(b) Regulations* (June 13, 2006), is available on the State Board's website. Given the progress of development and hearings on the 316(b) Policy, it is entirely likely that it will be in place some time in 2007.

example, the Santa Ana Regional Board recently permitted both the AES Power Generation Plant in Huntington Beach, Order R8-2006-0011 (“AES Permit”) and the Poseidon Seawater Desalination Facility in Huntington Beach, Order No. R8-2006-0034 (“Poseidon HB”). As directed by the AES permit, by January 2008, AES must either demonstrate compliance with or set forth a plan to achieve a 95% reduction in impingement and 90% reduction in entrainment associated with the power plant. Importantly, the AES Permit contains a reopener provision that expressly provides that the permit will be reopened. The reopener provision in the AES Permit provides:

“This Order will be reopened to address changes in State or federal statutes, plans, policies or regulations that would affect the requirements of the Order that pertain to cooling water intake.”

See AES Permit § VI.C.1(f) (emphasis supplied). Similar language is further included in subsection (a) of the AES Permit, which stipulates that the permit “**will** be reopened to address any changes in State or federal plans, policies or regulations that would affect the quality requirements for the discharges.” (emphasis supplied). From the quoted provisions, it is clear that the Santa Ana Regional Board contemplated the imminent adoption by the State Board of the 316(b) Policy and implementation of the federal regulations, by providing for the reopening of the AES Permit. If the AES Permit is Reopened and modified, suspended or even terminated under the forthcoming 316(b) Policy, the Poseidon HB permit will have to be reopened because the facilities operate in tandem.

On the other hand, in the case of the Permit for the Poseidon CDP and the State Board’s permit for the EPS in Carlsbad, Order No. R-2006-0043 (“EPS Permit”), neither the EPS Permit nor the CDP Permit contain an automatic reopener provision that requires the permits to be reopened to accommodate the State Board’s implementation of the 316(b) Policy, or in the event that a “Comprehensive Demonstration Study” or document required pursuant to the federal 316(b) regulations is completed. Instead, the Regional Board simply has the option to reopen and modify the Permit when the State Board’s 316(b) Policy takes effect, or when significant changes in the quantity or character in flow occur at the EPS as a result of that facility’s compliance with the 316(b) federal regulations. If the Regional Board chooses not to reopen the Permit before its expiration, or delays in doing so, this will frustrate implementation of the 316(b) Policy and the requirements of the CWA. Moreover, this will also result in similarly situated, piggy-backed power generation and desalination facilities operating in different Regions under different permit rules. This piecemeal approach to NPDES permitting is at odds with one of the central functions of the State Board—to ensure consistency in permit decisions among the Regional Boards and compliance with State Board policies and the CWA requirements.

Accordingly, the Regional Board should include language in the Reopener Provision that the Permit be automatically reopened with appropriate public comment and

participation once the Proposed State Wide Policy on CWA 316(b) Regulations takes effect. Further, the Regional Board should also strengthen the Reopener provision to ensure that the Permit will be reopened for other significant reasons, such as physical or operational changes, the publication of a Comprehensive Demonstration Study (“CDS”), or any other changes in relevant law, regulation or policy, that would have a bearing on the waste discharge requirements.<sup>3</sup> The imposition of a strengthened Reopener provision would provide an important safeguard to ensure consistent application of state wide policies and permits and to ensure that the severity and duration of adverse impacts to marine ecosystems will be minimized by operations of the Poseidon CDP.

Surfrider respectfully requests that the State Board reverse the Order of the Regional Board and Remand the Permit to the Regional Board to draft a new Reopener provision that incorporates a mandatory reopener provision that acknowledges the imminent implementation of the State Board’s Proposed State Wide Policy on CWA 316(b) Regulations, and strengthens the Reopener Provision, by adding terms and conditions that *require* reopening when necessary to protect the health of marine ecosystems. In doing so, the State Board and the Regional Board will ensure that Poseidon’s operations will protect public resources at the same time they are providing a public and private benefit, rather than providing these benefits at public expense.

***B. The RPA Fails to Adequately Analyze the CDP/EPS Discharges and to Incorporate These Analyses into WQBELs.***

Pursuant to 40 C.F.R. § 122.44(d), all effluent must be characterized by the Regional Board prior to determining the need for water quality based effluent limits (WQBELs) in the permit. Permits must include WQBELs for pollutants that are *or may* be discharged at levels that cause, have reasonable potential to cause, or contribute to a receiving water excursion above any state water quality standard.

In Table 8 of the Permit, WQBELs for CDP are established. For discharges emanating from CDP outfall No. 001: Total Suspended Solids (60 mg/L monthly average); pH (6.0 instantaneous Minimum an 9.0 maximum); Oil and Grease (25 mg/L avg. monthly, 40 mg/L average weekly, and 75 Mg/L instantaneous maximum); Settleable Solids (1.0 ml/L average monthly, 1.5 average weekly, and 3.0 Instantaneous max); Turbidity (75 NTU average monthly, 100 NTU average weekly, and 225 instantaneous max); and chronic toxicity (16.5 TU maximum daily).

In addition, the combined Poseidon CDP and EPS salinity limitations for effluent discharged from Monitoring Location No. 002 is 40 ppt average daily and 44 average

---

<sup>3</sup> These standards for Re-opening a reverse osmosis desalination plant permit were recommended by the staff of the Santa Ana Regional Water Quality Control Board in response to comments received in connection with the permit issued to the AES plant located in Huntington Beach.

hourly. However, for the other constituents set forth in Table 10 of the Permit, the individual metals and priority pollutants from Table B of the Ocean Plan, the Regional Board has adopted “performance goals” based upon the Regional Board’s finding of an “inconclusive” RPA. The Fact Sheet for the Permit, however, indicates that these WQBEL standards or performance goals were established using a statistical methodology that involved either projected effluent quality data provided as part of the Report of Waste Discharge, or projected effluent quality data which are estimates based upon pilot project effluent quality data provided by the discharger. *See* Permit Fact Sheet, F-29-30. These statistical analyses-- based upon modeling estimates and projections using data obtained partly from the discharger-- are inadequate to establish appropriate WQBELs for the Poseidon CDP facility.

The California Ocean Plan, published by the State Water Resources Quality Control Board, sets out the appropriate procedure for conducting an RPA when there is a lack of site specific data. According to that document, if facility-specific effluent monitoring data is not available (as is the case here), step 13 must be used. Step 13 requires a review of all available information to determine if WQBELs exist, including the ***discharge type***, solids loading analysis, ***facility type***, history of compliance problems, potential toxic impact of discharge, fish tissue residue data, water quality and beneficial uses of the receiving water, CWA 303(d) listing for the pollutant, the presence of endangered or threatened species or critical habitat, and other information. This analysis should also include consideration of the impacts on the EPS’ cooling water flows caused by changes in flow quantity or character brought about by compliance with the forthcoming 316(b) Policy and existing CWA regulations, or in the event that the Poseidon CDP operates as a stand alone facility (see comments in II.C, below).

A wealth of data is available in the desalination literature that has not been included in the RPA. For instance, data on the ***discharge type*** is available and has not been adequately considered. These impacts should be carefully analyzed as part of the RPA. The article “Ecotoxicological marine impacts from seawater desalination plants”, published in Desalination Journal, highlights several potential impacts which are not adequately considered. A few of these impacts are as follows:

(1) ***Thermal loading***. Thermal loading was found to bring about the following adverse effects: depression in the rate of phytoplankton photosynthesis; replacement of normal algae populations by less desirable species; the decrease in the production of macroalgal populations; and a decrease the abundance and diversity of phytoplankton.

(2) ***Increased salinity***: increase in the salt concentration can reduce plankton production to extinction (mainly of larvae and young individuals). The susceptibility of invertebrates, mainly crustaceans, varies, but in general, those with a long stomach are more sensitive to a rise in salinity than those with a short one. Crustacean and other invertebrate larvae floating in the water column are also more sensitive to variations in



salinity levels than fully developed individuals. Some of the species, mainly the diatoms, are resistant to high salinity levels, but most of the species will not survive.

(3) **Copper (Cu)**: Concentrations of copper found in desalination effluents are 200 fold higher than natural copper concentrations in sea water; moreover, at elevated levels, Cu is very toxic, it acts as enzyme inhibitor in organism and can result in the demise of large numbers of susceptible organisms. For phytoplankton, Cu inhibits photosynthesis, restrict the uptake and assimilation of nitrate and the uptake of silicate.

In addition, data on the *facility type* is available. Thus, the RPA should analyze data from similar facilities, rather than simple calculating WQBELs from statistical analyses based upon estimates generated by samples or by the discharger. According to the article “Concentrate and other waste disposals from SWRO plants: characterization and reduction of their environmental impact”, published in Desalination Journal, effluents from Salt Water Reverse Osmosis (SWRO) plants (such as CDP), result from reverse osmosis lines, which discharge concentrate, rinsing water characterized by a high content in dissolved salts (generally from 1.7 to 2.5 times that of the seawater content) and by an acid pH (pH about 5.50 vs. a seawater pH close to 8.00). The SWRO membrane cleaning units also utilize dirty chemical solutions, which are characterized by a pH that may be very alkaline (pH 11) or very acid (pH 3) and can cause strong loads in biological, mineral and organic matters.

Further, the journal article “Chemical impacts from seawater desalination plants - a case study of the northern Red Sea” discussed the effects of conventional discharge methods similar to those proposed in Poseidon’s permit and found that the overall daily chlorine discharge within the study area amounted to 2,708 kg. More optimistically, the article “Brine Discharge from the Javea Desalination Plant”, published in Desalination Journal, discusses a reverse osmosis facility with a decreased marine impact: The Javea desalination plant, on the Mediterranean coast of Spain. This SWRO plant currently has a production capacity of 28,000 m<sup>3</sup>/d of desalinated water. The brine discharge of this plant, conveniently diluted in the Fontana Canal, creates an artificial movement of the waters in the Canal, and brings the density and the temperature of the canal water more in line with that of sea water. It also reduces the effects of the sun in summer and oxygenizes the beds of the canal.

These journal articles provide an example of the wealth of data available concerning discharges and facilities comparable to the CDP, yet these data and studies were not considered in the RPA that gave rise to the WQBELs set forth in the CDP Permit.

***C. The Undiluted Direct Discharges from a Stand-Alone Facility Have not Been Adequately Analyzed and Will Have Significant Adverse Marine Impacts***

As commented in Surfrider's letter to the Regional Board on August 9, 2006 (Exhibit B), the EPS in Carlsbad has been decreasing capacity and currently ceases operations for as many as 100 days per year. The Poseidon CDP will therefore be operating as a stand-alone facility up to 27% of the time. Moreover, Cabrillo Power I LLC, the owner of the EPS, announced its intention in July 2006 to dismantle and reconfigure the existing ESP facility within the next few years. *See, e.g., Michael Burge, Upgrade May Produce 340 Megawatts of Irony*, San Diego Union-Tribune, July 26, 2006. Although subsequent statements by the company rendered some uncertainty about the likely shut-down date for the antiquated plant, *see Michael Burge, Water board Oks High-salt discharge permit*, San Diego Union-Tribune, Aug. 17, 2006, the Regional Board had an obligation, in exercising its best professional judgment, to investigate this issue further and potentially adjust the terms of the Poseidon CDP permit to accommodate it.

In the event EPS shuts down--or is idle for substantial periods of time-- the Poseidon CDP will then be operating as a stand alone facility. Again, the literature suggests that discharges from a stand-alone reverse osmosis plant can have significant adverse impacts on marine ecosystems. According to the article "The footprint of the desalination processes on the environment", published in *Desalination Journal*, the direct discharge method (the method for a stand-alone plant) is not recommended for seas with high sensitivity, or for large desalination plants. Even if the brines would be mostly diluted at a short distance from the outlet, during the many days in which the sea is calm, the secondary dilution would be negligible. On those days the damage to the coastal habitats would be high.

In addition, according to the article "Ecotoxicological marine impacts from seawater desalination plants", published in *Desalination Journal*, some chemical components released by desalination plants pose a potential hazard to estuarine organisms owing to their toxicity. Most important in this respect are chlorine and trace metal loads which must receive much attention because at times it accounts for much of the mortality of susceptible organisms in discharge waters, leaving their mark on the flora and fauna around the pipeline outlet. Taken together, thorough consideration of the marine impacts of operating the CDP as a stand-alone facility must be included in the permit. Moreover, as part of the Regional Board's obligation to exercise best professional judgment, thorough consideration of the impacts on the Poseidon CDP resulting from EPS' compliance with the federal 316(b) regulations must be undertaken and reflected in the permit. Because the Permit has not adequately considered CDPs operations as a stand-alone facility and in tandem with the EPS, the Permit is inadequate.

### **III. Conclusion**

The Regional Board acted unlawfully in failing to perform a complete Reasonable Potential Analysis when establishing WQBELs in the CDP Permit. The Regional Board also failed to adequately consider Poseidon CDP's operations as a stand alone facility,

and to provide any provisions for an automatic or mandatory reopening the Permit to minimize harm to public resources or otherwise comply with the State Board's forthcoming State Wide Policy on CWA 316(b) Regulations or other significant changes in state or federal law. The State Board should therefore reverse the Regional Board's Permit decision and remand the Permit to the Regional Board with instructions to substantially revise the Reopener Provision, perform a complete RPA and promulgate appropriate WQBELs, and make any other appropriate changes after thorough consideration of the impacts of the CDP's operations as a stand-alone facility.

Dated: September \_\_\_, 2006

Respectfully submitted,

By: \_\_\_\_\_

Martin McCarthy

Daniel Cooper

Lawyers for Clean Water, Inc.

Attorneys for Surfrider Foundation

and Orange County Coastkeeper

cc: A true and correct copy hereof has been mailed on September 15, 2006 as follows:

John Robertus, Executive Officer  
California Regional Water Quality Control Board,  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, California 92123  
FAX: (858) 571-6972  
(Permit attachment omitted)

Peter M. MacLaggan  
Senior Vice President  
Poseidon Resources Corporation  
501 W. Broadway, Suite 840  
San Diego, CA 92101  
(Permit attachment omitted)

Cabrillo Power I LLC  
4600 Carlsbad Blvd.  
Carlsbad, CA 92008-4301  
(Permit attachment omitted)